IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5556 of 2007()

[CRIME NO.90/07 OF ANCHUTHENGU POLICE STATION]
TRIVANDRUM DISTRICT.

PETITIONER/ACCUSED

JAMES @ PAULOSE,S/O. ALPHONSE,
AGED 33 YEARS,191/AYYAPPAN THOTTAM,
8,KAYIKKARA, ANCHUTHENGU,KAYIKKARA P.O.

BY ADV. SRI.SURESH JOSE

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNKAULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5556 of 2007

Dated this the 17th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to be in possession of 375 x 25 ml of IMFL. He was allegedly attempting to transport the same in an autorickshaw. The petitioner could not be apprehended. He took to his heels. His name, complicity and the details are mentioned clearly in the seizure mahazer and in the occurrence report. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He allegedly belongs to the anti-liquor lobby of the locality. To deter him from pursuing such activity, the petitioner has been falsely arrayed as an accused. The petitioner may be saved of the undeserved trauma of arrest and detention. Anticipatory bail may be granted to him, it is prayed.

3. The learned Public Prosecutor opposes the application. Except self-surviving assertions of the petitioner, there is nothing to show that he is a member of the anti-liquor

lobby. The petitioner does not, in the facts and circumstances of this case, deserve the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that this is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate and then seek regular bail. I find no features available in this case which can justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007